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Effective on 12/08/2004. Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).		Complete if Known	
FEE TRANSMITTAL For FY 2006		Application Number	10/800,566-Conf. #9823
		Filing Date	March 15, 2004
		First Named Inventor	Frank Semersky
		Examiner Name	C. R. Harmon
<input type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Art Unit	3721
TOTAL AMOUNT OF PAYMENT	(\$) 0.00	Attorney Docket No.	29953-215594

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: **22-0261** Deposit Account Name: **Venable LLP**

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Small Entity	
	Fee (\$)	Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)** **Multiple Dependent Claims**

_____ - 20 = _____ x _____ = _____ **Fee (\$)** **Fee Paid (\$)**

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims **Extra Claims** **Fee (\$)** **Fee Paid (\$)**

_____ - 3 = _____ x _____ = _____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
_____	_____	_____ / 50 _____ (round up to a whole number) x _____ = _____		

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): _____

SUBMITTED BY			
Signature	<i>Kavita B. Lepping</i>	Registration No. (Attorney/Agent)	54,262
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		Date	January 16, 2007



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of: Frank Semersky et al.

Application No.: 10/800,566

Confirmation No.: 9823

Filed: March 15, 2004.

For: PASTEURIZABLE WIDE-
MOUTH CONTAINER

Art Unit: 3721

Examiner: Christopher R. Harmon

Atty. Docket No.: 29953-215594

Customer No. **26694**
PATENT TRADEMARK OFFICE

REPLY BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, Va. 22313-1450

Dear Sir:

In response to the Examiner's Answer dated November 17, 2006, Appellants submit this Reply Brief pursuant to 37 C.F.R. § 41.41. No fee is believed to be due for this Reply Brief, however, should any fees be due, the Patent Office is hereby authorized to charge any necessary fees, or credit any refunds, to our deposit account no. 22-0261, referencing our docket no. 29953-183223.

I. Status of Claims – M.P.E.P. § 1208(I); 37 C.F.R. § 41.37(c)(1)(iii)

The status of the claims is unchanged from the Appeal Brief. That is, pending claims 3-21 have all been finally rejected, and are appealed.

II. Grounds of Rejection to be Reviewed on Appeal – M.P.E.P. § 1208(I); 37 C.F.R. § 41.37(c)(1)(vi)

The grounds of rejection for review are:

Whether claims 3-21 are properly rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. 5,887,739 to Prevot (Prevot) in view of U.S. 5,908,128 to Krishnakumar (Krishnakumar).

III. Argument – M.P.E.P. § 1208(I); 37 C.F.R. § 41.37(c)(1)(vii)

A. No New Grounds of Rejection Presented in the Examiner's Answer

The Examiner's Answer dated November 17, 2006, does not contain a rejection designated as a new ground of rejection, nor does it appear to contain any undesignated new grounds of rejection. *See* M.P.E.P. §§ 1207.03(III)-(IV). Section 9 of the Examiner's Answer, titled "Grounds of Rejection," is believed to recite the same grounds of rejection presented in the Final Office Action dated January 11, 2006. Accordingly, the Appellants are not required to exercise the options set forth in 37 C.F.R. §§ 41.39(b)(1)-(2) to avoid *sua sponte* dismissal of the appeal as to claims subject to a new ground of rejection. Nonetheless, the Appellants request that the appeal be maintained by the filing of this Reply Brief, which is submitted in accordance with 37 C.F.R. § 41.41. No new amendments, affidavits, or other evidence are being submitted with this Reply Brief.

B. Reply to Examiner's "Response to Argument"

The Examiner's conclusion that the combination of Krishnakumar and Prevot teaches the claimed invention is erroneous. The Examiner appears to argue that because Krishnakumar states that the bottle disclosed therein is pasteurizable, the combination of Krishnakumar and Prevot will result in a bottle that is able to withstand the pasteurization process. However, the container of Prevot cannot endure the high heat of pasteurization. In fact the Examiner admits on page 3 of the Answer that Prevot does not disclose pasteurizing the filled and capped container, as required by Appellants' claims. (See, e.g., claim 3, lines 11-13.) Nonetheless, the Examiner then concludes that it would have been obvious to a person of skill in the art to pasteurize the container of Prevot, as well as to provide the other features of the claimed invention that Prevot lacks, such as vertically spaced grooves in the sidewall, footed base, and crystallinity in excess of 25%. Thus, the Examiner makes the improper assumption that a container suited to hot-filling is also capable of withstanding the high temperatures of pasteurization.

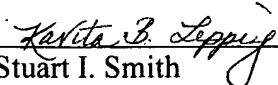
As stated in the Appeal Brief, pasteurization requires temperatures that far exceed those of hot-filling. Hence, a person of skill in the art would not modify the container of Prevot in the manner suggested by the Examiner because there is no reason to expect that the combination would be successful. Accordingly, no reasonable combination of Krishnakumar and Prevot will result in Appellants' claimed container and claims 3-21 are patentable over the references. The rejection under 35 U.S.C. §103 must be reversed.

IV. Conclusion

In conclusion, the Appellants respectfully request reversal of the Examiner's rejections of claims 3-21.

Respectfully submitted,

January 16, 2007


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